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11/22/2005 MJONES2 00000001 061050 09718164

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| 02 FC:1253 | 1020.00 DA  |

Adjustment date: 03/13/2006 EEKUBAY1  
11/22/2005 MJONES2 00000001 061050 09718164  
01 FC:1401 500.00 CR  
02 FC:1253 1020.00 CR

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(3) FISH & RICHARDSON 6175428906

NO. 7392 P. 1

PATENT & TRADEMARK OFFICE  
FACSIMILE

Attorney's Docket No.: 10449-027001  
Client's Ref. No.: P1S2000216US

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US PATENT & TRADEMARK OFFICE

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JAN 31 2006

Number of pages including this page 6 pages

Applicant : Koji Hayashi  
Serial No. : 09/718,164  
Filed : November 21, 2000

Art Unit : 2653  
Examiner : Tan X. Dinh

Title : DATA RECORDER

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attached to this facsimile communication cover sheet is Request for Refund, faxed this 31<sup>st</sup> day of January, 2006, to the United States Patent and Trademark Office.

Respectfully submitted,

Date: January 31, 2006

  
Frank R. Occhiuti  
Reg. No. 35,306

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-5070  
Fax: (617) 542-8906

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**CERTIFICATE OF TRANSMISSION BY FACSIMILE**

I hereby certify that this correspondence is being transmitted by facsimile to the Patent and Trademark Office on the date indicated below.

Date of Transmission January 31, 2006

Signature 

Melissa Krueger  
Typed or Printed Name of Person Signing Certificate

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(3) FISH & RICHARDSON 6175428906

NO. 7392 P. 2

Attorney's Docket No.: 10449-027001 / P1S2000216US

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Applicant : Koji Hayashi  
Serial No. : 09/718,164  
Filed : November 21, 2000  
Title : DATA RECORDER

Art Unit : 2653  
Examiner : Tan X. Dinh

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR REFUND

On March 17, 2005, we filed a Petition for Suspension of Action. The final deadline to file a Notice of Appeal was May 5, 2005, and we had not yet received a decision on our petition. In a conversation between Examiner Dinh and Applicant's representative on April 25, 2005, the Examiner confirmed that he was working on the decision and that we would receive the decision by the end of the week. To ensure the application did not go abandoned we filed a Provisional Notice of Appeal. The Provisional Notice of Appeal states: "Since the exact mailing date of the Decision on Petition is unknown, and to ensure that the application does not suffer any loss of rights in this application, applicant has filed this Provisional Notice of Appeal and authorizes applying the appeal fee if the Decision on Petition has a mailing date after May 5, 2005." Because the decision was mailed May 5, 2005, the Notice of Appeal was not entered. Therefore, we believe the charge to the deposit account was improper.

On November 22, 2005, fees in the amount of \$1,020.00 (extension fee) and \$500.00 (notice of appeal fee) were charged to Fish & Richardson's Deposit Account No. 06-1050. We submit that this was improper. Applicants respectfully request that the overcharge amount be refunded to Fish & Richardson's Deposit Account No. 06-1050 as a credit, referencing Attorney Docket Number 10449-027001.

CERTIFICATE OF TRANSMISSION BY FACSIMILE

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January 31, 2006  
Date of Transmission

Signature

Melissa Kruegel

Typed or Printed Name of Person Signing Certificate

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(3) FISH & RICHARDSON 6175428906


NO. 7392 P. 3

Applicant : Koji Hayashi  
Serial No. : 09/718,164  
Filed : November 21, 2000  
Page : 2 of 2

Attorney's Docket No.: 10449-  
027001 / P1S2000216US

Respectfully submitted,

Date: January 31, 2006



Frank R. Occhiuti  
Reg. No. 35,306

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906

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(3) FISH & RICHARDSON 6175428906

NO. 7392 P. 4

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Attorney's Docket No.: 10449-027001 / P1S2000216US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji Hayashi  
Serial No. : 09/718,164  
Filed : November 21, 2000  
Title : DATA RECORDER

Art Unit : 2653  
Examiner : Tan X. Dinh

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JAN 31 2006

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PROVISIONAL NOTICE OF APPEAL

Applicant hereby provisionally appeals to the Board of Patent Appeals and Interferences from the action dated November 5, 2004, finally rejecting claims 1-13.

On March 17, 2005, Applicant filed a Petition for Suspension of Action to address all of the Examiner's rejections for a co-pending application. On April 25, 2005, applicant's representative spoke to Examiner Dinh to confirm if a decision had been issued. Examiner Dinh confirmed that he was working on the decision and that we would receive the decision by the end of the week. On May 5, 2005, applicant's representative again spoke to Examiner Dinh to confirm if a decision had been issued. Examiner Dinh was not certain which day the decision was mailed, but confirmed that he had produced one. Examiner Dinh then instructed us to contact Kimberly Spears, Supervisor of Examination of Group 2600 to inquire the exact date of the mailing of the decision. Applicant's representative was unable to reach Examiner Sears in person, but let a voice mail message.

Since the exact mailing date of the decision on petition is unknown, and to ensure that the applicant does not suffer any loss of rights in this application, applicant has filed this Provisional Notice of Appeal and authorizes applying the appeal fee to Deposit Account No. 06 1050 if the decision re petition has a mailing date after May 5, 2005 and is then deemed necessary.

CERTIFICATE OF TRANSMISSION BY FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile to the Patent and Trademark Office on the date indicated below.

Date of Transmission

May 5, 2005

Signature

Matthew G. Doherty

Typed or Printed Name of Person Signing Certificate

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(3) FISH & RICHARDSON 6175428906

NO. 7392 P. 5

Applicant : Koji Hayashi  
Serial No. : 09/718,164  
Filed : November 21, 2000  
Page : 2 of 2

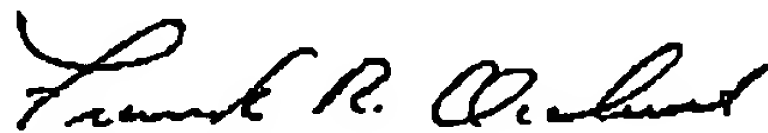
**COPY**

Attorney's Docket No.: 10449-  
027001 / P1S2000216US

Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: May 5, 2005

  
Frank R. Occhiuti  
Reg. No. 35,306

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(3) FISH & RICHARDSON 6175428906

NO. 7392 P. 6

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| Billing Attorney  | Serial # | Statement Date | Client/Matter | TMC Code                                  | Description | Amount        |
|---|----------|----------------|---------------|---|-------------|---------------|
| FRO   |          |                |               |   |             |               |
| 08718184  | 11/22/05 | 10448-087001   | 513           | Extension for response within third month |             | \$1,020.00    |
| 09716164  | 11/22/05 | 10448-027001   | 517           | Notice of appeal                          |             | \$500.00      |
| 10627943  | 11/16/05 | 00633-030002   | 530           | Statutory disclaimer                      |             | \$68.00 - vic |
| 10858309  | 11/23/05 | 05770-197001   | 528           | Copy of patent application as filed       |             | \$20.00 - vic |
| Summary for 'Billing Attorney' = FRO (4 detail records) |          |                |               |   |             |               |
| Sum   |          |                |               |   |             | \$1,608.00    |

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Thursday, December 08, 2005